IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 20938 of 2004(P)

I.A.2000/03 IN O.S.180/2000 OF MUNSIFF COURT, CHITTUR

PETITIONER:

ARUMUGHAN, S/O. RAMAN, 19/43,
POOKOTTUPARAMBU, THATHAMANGALAM VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:

C. KRISHNAN, PERUNKULANGARA,
THATHAMANGALAM VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXHIBITS OF PETITIONER:

EXT.P1: COPY OF REPORT AND PLAN SUBMITTED BY COMMISSIONER DT.23/8/03

EXT.P2: COPY OF DEPOSITION OF COMMISSIONER DT. 12/11/03

EXT.P3: COPY OF ORDER IN IA 2000/03 DT.12.3.04

EXT.P4: COPY OF ORDER IN IN O.S.180/00 IN I.A.2100/03

EXHIBITS OF R1:

EXT.R1(a): COPY OF IA 2000/03 IN OS 180/00 OF MUNSIFF COURT, CHITTUR

EXT.R1(b): COPY OF OBJECTION FILED TO EXT.R1(a)

EXT.R1(c): COPY OF IA 2100/03 IN OS 180/00 ON FILE OF MUNSIFF COURT, CHITTUR

EXT.R1(d): COPY OF OBJECTION FILED TO EXT.R1(c)

EXT.R1(e): COPY OF PATTA NO.200/80 ISSUED BY LAND TRIBUNAL, CHITTUR

//True copy//

SHW TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.20938 OF 2004

Dated 12th December 2006

JUDGMENT

Petitioner is the defendant in O.S.180/2000 on the file of Munsiff court, Chittur. Respondent is the plaintiff. Petitioner is challenging Ext.P3 order passed by learned Munsiff dismissing I.A.2000/03 filed by petitioner, under Order XXVI Rule 9 to set aside the report submitted by the advocate commissioner. This petition is filed under Article 227 of Constitution of India contending that learned Munsiff has not properly appreciated objections to the report and evidence and it should have been found that the report is insufficient to decide the dispute involved in the suit and at least the report should have been remitted back to the commissioner.

2. On hearing learned counsel appearing for petitioner, I do not find any infirmity in Ext.P3 order, warranting interference in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. Question whether

an order passed by the trial court dismissing an application filed to set aside the report filed by the commissioner could be interfered in exercise of the extra ordinary jurisdiction of this court was considered by this court in **C.K.Venkateram Nayidu v. C.R.Vasanthi and others (AIR 2000 Kerala 27)** and **A.Narayani v. Kittan @ Krishnan (1996 (2) KLJ 489.** It was held that it is for the trial court to decide whether report is to be set aside or as the trial court is well equipped and the order is only an interlocutory order and trial court has to dispose the suit untrammeled by the said order. At the time of recording the evidence, if the court finds that the report is insufficient to resolve the disputes between the parties or to grant an effective decree, as sought for by petitioner, Munsiff is competent either to remit back the report to the commissioner or to appoint another commissioner. Petitioner is also entitled to challenge Ext.P3 order along with final judgment, if it goes against him. Hence Ext.P3 order cannot be interfered in this petition.

3. Even though petitioner has challenged Ext.P4 order granting permission to amend the plaint under

Order VI Rule 17 amendment also, it was necessitated due to the submission of the report by commissioner identifying the property. Learned Munsiff has exercised the wide discretion vested in him and allowed respondent to amend the plaint. I find no reason to interfere with that order also in exercise of the extra ordinary jurisdiction under Article 227 of Constitution of India. Petitioner is entitled to file an additional written statement.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.